(2)

04-1354

No. 05-

In The

Supreme Court of the United States

DARRYL KINNEY

Petitioner

v.

HAMILTON PARTNERS

Respondent

On Petition For Writ Of Certiorari
To The Seventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

"APPENDIX"

DARRYL KINNEY
PETITIONER PRO SE
1910 Buckeridge Ct.
Gurnee, Ill. 60031
847-338-0234

APPENDIX A

UNITED STATES COURT of APPEALS

FOR THE SEVENTH CIRCUIT

SUBMITTED SEPTEMBER 23, 2004

DECIDED SEPTEMBER 23, 2004

Before

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

Hon. TERRANCE T. EVANS, Circuit Judge

No. 04-2122

DARRYL KINNEY v. HAMILTON PARTNERS

ORDER

"Darryl Kinney sued his former employer, Hamilton Partners, for race discrimination and retaliation under Title VII, despite having entered(with the assistance of counsel) into a severance agreement in which he waived his right to sue. In exchange , he received three months' salary and Hamilton's promise not to contest his claim to unemployment benefits.

district court found that Kinney's waiver was knowing and voluntary, see Pierce v. Atchinson, Topeka & Santa Fe Ry. Co.,65 F.3d562, 571(7th Cir. 1995)(identifying eight factors to consider in determining whether a waiver of federal civil rights was knowing and voluntary),

*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).

and so granted motion for summary judgment. A separate state breach-of-contract claim was dismissed without prejudice.

On appeal, Kinney argues that he signed the severance agreement under duress-namely the fear of losing his promise not to challenge those benefits was simply part of the bargain, and that by itself does not amount to duress. See Pierce,65 F.3d at 569(duress is not caused merely by a difficult bargaining position or the pressure of financial

circumstances). Kinney also claims that he was on medication when he signed the agreement, which he says clouded his thoughts. But as the district court noted, he has provided no admissible evidence in support of this claim, and his bare assertion that the medication interfered with his will is not enough to create a genuine issue of fact. Cf.id at 572(bald assertion of misrepresentation is legally insufficient to show that a waiver was knowing and voluntary).

AFFIRMED.

UNITED STATES COURT of APPEALS

FOR THE SEVENTH CIRCUIT

NOVEMBER 3, 2004

Before

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. DIANE P. WOOD, Circuit Judge

Hon. TERRANCE T. EVANS, Circuit Judge

No. 04-2122

DARRYL KINNEY v. HAMILTON PARTNERS

ORDER

Plaintiff-appellant filed a petition for a rehearing on October 6 2004. All of the judges on the panel have voted to deny rehearing. The petition for rehearing is therefore DENIED.

APPENDIX B

United States District Court for the

Northern District of Illinois

Darryl W Kinney

1910 Buckeridge Court Gurnee, Illinois 60031

Case Number 1:03-cv-03905

Title: Kinney v. Hamilton Partners

Assigned Judge; Honorable George W. Lindberg

MINUTE ORDER of 4/6/04 by Hon. George W. Lindberg:

Defendant's motion for summary judgment is granted (38-1). Plaintiff's State Law breach of severance agreement claim is dismissed without prejudice.

Entered Memorandum and Order. Terminating case

Mailed notice.

This docket entry was made by the Clerk on April 7, 2004

United States District Court for the

Northern District of Illinois

Darryl W Kinney

1910 Buckeridge Court Gurnee, Illinois 60031

Case Number 1:03-cv-03905

Title: Kinney v. Hamilton Prt

George W. Lindberg: Senior United States District Judge

MEMORANDUM AND ORDER

On June 9,2003, Plaintiff Darryl Kinney filed his complaint of Employment Discrimination against Defendant Hamilton Partners. Plaintiff's complaint states three claims1-(1) race discrimination in violation of Title VII,(2) retaliation in violation of Title VII, and (3) breach of Plaintiffs severance agreement in violation of state law- and asks the Court, inter alia, to grant Plaintiff appropriate injunctive relief, lost wages, liquidated/double damages, (front pay, compensatory damages, punitive damages,(6)

prejudgment interest, post-judgment interest, and costs. On February 13, 2004, Defendant filed its motion for summary judgment. Defendants motion is hereby granted. Legal Standard- Summary Judgment Summary judgment will be granted only"when the 'pleadings,depositions,answers to interrogatories, and admissions on file, together with the affidavits,if any,show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Cerutti v. BASF Corp., 349.F. 3d 1055,1060(7th Cir.2003)(quoting Fed.R.Civ. P.56)

(1) See Kinney v. Hamilton Partners,No 03-3905(N.D. III Aug.6,2003) (order denying Defendants motion to dismiss).

In making this determination the Court must"construe(e) all facts... and draw() all reasonable inferences from those facts...in favor of the...non-moving part(y)..."Id.(citation omitted). Because Plaintiff is proceeding pro se in this civil action, he "benefit(s) from various procedural protections not otherwise afforded to the attorney-litigant represented ..."2 Downs v. Westphal,78 F.3d 1252,1257(7th Cir.1996) (citation and internal quotation marks omitted).

However, Plaintiff must still adhere to the Federal Rules of Civil Procedure and this districts local rules.3 Members v. Paige,140 F.3d 699,702(7th Cir.1998)("rules apply to uncounseled litigants and must be enforced"). This includes compliance with rules governing summary judgment motions.4 Little v. Coxs Supermkts., 71 F.3d 637,641(7th Cir.1995) (district court may strictly enforce Northern

District of Illinois Local Rule 56.1): Waldridge v. Am.Hoechst Corp., 24 F.3D 918,923-24(7TH Cir.1994)(same).

Statement of facts

On February 5, 2004, the Court ordered Plaintiff to file his response to Defendants

(2) See also Greer v Bd.of Educ. Of the City of Chicago, Ill. ,267 F.3d 723,727(7th Cir.2001)("The essence of liberal construction is to give a pro se plaintiff a break when, although he stumbles on a technicality, his pleading is otherwise understandable.") (citation omitted); Tressel v. Comined Ins. Co. of Am., No.01-6231, 2003 WL 1626528,at *4(N.D.Ill.2002) ("the Court reads a pro se plaintiffs pleadings liberally") (citation omitted).

(3) See also Downs,78 F.3d at 1257("pro se litigants are not entitled to a general dispensation from the rules of procedure or court-imposed deadlines") (citation and internal quotation marks omitted).

(4) See also Johnson v. Cambridge Indus., Inc, 325

F.3d 892,898 (7th Cir. 2003) (district courts…are not required to scour every inch of the record for evidence that is potentially relevant to the summary judgment motion before them") (citations omitted); Tressel, No. 01- 6231,2003 WL 1626528, at *4(" the pro se litigant is still required to follow the rules of procedure and LR 56.1") (citation omitted).

summary judgment motion on or before February 27,2004. See Kinney v. Hamilton Partners, No 03-3905(N.D..III.Feb.5,2004)(order establishing briefing schedule for Defendants summary judgment motion). This included Plaintiffs response to Defendants Local Rule 56.1(a)(3) Statement of Material Facts to Which There is No Genuine Issue.5 See N.D. Ill. L.R. 56.1(b).Nevertheless, Plaintiff failed to file his response to Defendants statement of material facts until March 8,2004, ten days after the date set by the Court. To place Plaintiffs tardiness in perspective, Defendant timely filed its reply brief five days before Plaintiff filed his response to Defendants statement of material facts.6 While Plaintiff may be entitled to leniency and greater procedural protections than Defendant(an attorney-represented litigant), he is not "entitled to a general dispensation from the rules of procedure or court imposed deadlines." Downs,78 F.3d at

1257 (citation and internal quotation omitted); see also Members,140 F.3d at 702(same).Additionally, Plaintiff must comply with this Courts local rules concerning summary judgment motions, including Northern District of Illinois Local Rule 56.1. See Little, 71 F.3d at 641; Waldridge, 24 F .3d at 923-24; Tressel v, Combined Ins. Co. of Am., No. 01-6231, 2003 WL 1626528, at *4 (N.D. Ill. Mar. 27, 2003). Because Plaintiff's response to Defendant's Statement of material Facts was not filed in a timely-

(5) Plaintiff was well aware of his obligations under Northern District of Illinois Local Rule 56.1. See, e.g., Kinney v. Hamilton Partners, No. 03-3905 (N.D. Ill. Jan. 16, 2004) (order striking Plaintiff's summary Judgment motions and advising Plaintiff of requirements of N.D. Ill L.R. 56.1); (Def.'s Notice to Pro Se Litigant Opposing Mot.For Summ. J.)

(6) Plaintiff has never offered any excuse or justification for his failure to comply with the Court's February 5 Order.

Fashion, the Court will disregard the statements Included therein.7 Even if the Court were to consider Plaintiff's untimely response to Defendant's statement of material facts, it would not serve to create a genuine issue as to any material facts. As an initial matter, the statements included in paragraphs 1-7, 9-14, 16-20, 23-30, 32, 34 , 37-46, and 49 were not accompanied by a citation to the record or any other supporting material. Therefore, these statements may be disregarded when deciding Defendant's motion. See Smith v. Lamz, 321 F. 3d 680, 683 (7th Cir. 2003) ("a mere Disagreement with the movant's asserted facts is inadequate If made without reference to specific supporting material") (citation omitted); Little,71 F.3d at 641 ("Local Rule 56.1 makes explicit the responsibility…to highlight which factual averments are in conflict as well as what record evidence there is to confirm the

dispute.'") (citation omitted); Little, 71 F.3d at 641 ("Local Rule 56.1 makes explicit the responding party's burden of controverting the movant's position with adequate citations to record....General principles of advocacy suggest...that a party contesting summary judgment has a responsibility... to 'highlight which factual averments are in conflicts as well as what record evidence there is to confirm the dispute.'") (citation omitted); Martz v. Union Labor Life Ins. Co. , 757 F .2d 135,138(7th Circ. 1985) ("It bears Repeating that the purpose of summary judgment is to Determine whether there is any genuine issue of material Fact in dispute and, if not, to render judgment in accordance with the law as applied to the established facts. The facts must be established through one of the vehicles designed to ensure reliability and veracity- depositions, answer to interrogatories, admissions and affidavits.); N.D. Ill. L.R. 56.1 (b) 8.

(7) On March 17, 2004 Plaintiff filed "Plaintiffs Reply toDefendants Reply to Plaintiffs Response to Defendants Local Rule 56.1 (a) (3) Statement of Facts to Which There Is No Genuine Issue." Plaintiff is not authorized under Northern District Of Illinois Local Rule 56.1 to file such a Reply, and at no time did he obtain leave from the Court to Do so. Because Plaintiff's March 17 filing is inappropriate And plagued by the same procedural defects as his Untimely March 8 response to Defendant's statement of Material facts, it will be disregarded. (8) Northern District of Illinois Local Rule 56.1(b) provides, in part:

Furthermore, the exhibits and documents cited to Support the statements included in paragraphs 8,15, 21-22, 31, 33, 35-36, and 47-47 were not properly (1) incorporated by plaintiff's response 9 or (2) authenticated, certified, or otherwise made admissible or usable at trial. Cf. Lamz, 321 F. 3d at 682-83 (finding that party "failed in In his obligation to support controverted or additional Facts with citations to admissible evidence" even through He "sought to support his factual disagreements by affixing To his brief assorted material...{without} ensur{ing} That He attached only admissible evidence"). "To be admissible, Documents must be authenticated by and attached to an Affidavit that meets the requirements of Rule 56(e) and the Affiant must be a person through whom the exhibits could Be admitted into evidence."Scott v. Edinburg, 346 F.3d 752, 759-60 n. 7 (7th Cir.2003) (citation omitted).

Accordingly, the Court will not consider Exhibits A,B,C,E, F, G, H, I, or N or the statements purportedly derived From those exhibits. See Woods v. City of Chicago, 234

Each party opposing a motion filed pursuant to Fed. R. Civ. P.56 shall serve and file... a concise response to the Movant's statement that shall contain: (A) a response to Each numbered paragraph in the moving party's statement, Including, in the case of any disagreement, specific References to the affidavits, parts of the record, and other Supporting material relied upon. All material facts set forth In the statement required of the moving party's statement, Including, in the case of any disagreement, specific References to the affidavits, parts of the record, and other Supporting material relied upon, and (B) a statement, Consisting of short numbered paragraphs, of any Additional facts that require the denial of summary Judgment, including references to the affidavits, parts Of The record other supporting material relied upon.

All Material facts set forth in the statement required

of the Moving party will be deemed to be admitted

unlessControverted by the statement of the opposing

party. N.D.1ll. L. R. 56.1 (b) (emphasis added).

(9) Plaintiff's Exhibits A, B, C, E, F, G, H, and I were

submitted with Plaintiff's summary judgment motion.

While many of those exhibits were cited in Plaintiff's

Response to Defendant's statement of material facts,

They Were not submitted with the same.

Nevertheless, this fact is

Of little consequence in light of the other procedural

Defects that plague Plaintiff's filings.

F.3d 979, 988 (7th Cir. 2000) ("Sworn testimony is not the The only basis on which summary judgment may be Granted; rather, 'the court may consider any material that Would be admissible or usable at trial,' ... including Properly authenticated and admissible documents or Exhibits.") (citations and internal quotation marks omitted); Smith v. City of Chicago, 242 F.d 737, 741 (7th Cir. 2001) (same); Martz, 757 F.2d at 138. Indeed, it is well-established that "{s} upporting materials designed to to established issues of fact in a summary judgment proceeding 'must be established through one of the vehicles designed to ensure reliability and veracity- depositions, answers to interrogatories, admissions and affidavits. When a party seeks to offer evidence through other exhibits, they must be identified by affidavit or otherwise made admissible in evidence. " Friedel v. City of Madison, 832 F.2D 965, 970 (7TH Cir. 1987) (citations omitted).

Finally, Plaintiff's response to Defendant's Statement Of material facts does not incorporate or specifically cite To the deposition transcripts marked as Exhibits J, K, L, And M and attached to Plaintiff's brief in response to Defendant's summary judgment motion. Moreover, no Citations to any of the transcripts may be found in Plaintiff's brief. These procedural errors doom Plaintiff's Attempts to utilize the information contained therein. Indeed, the Court is under no duty to comb through record, Searching for evidence that could possibly support Plaintiff's claims. See Johnson v. Cambridge Indus; Inc; 325 F.3D 892, 898 (7TH Cir. 2003) ("district courts…are not required to scour every inch of the record for evidence that is potentially relevant to the summary judgment motion before them") citations omitted); Lamz, 321 F.3d at 683 ("A district court is not required to "wade through improper denials and legal argument in search of a genuinely disputed fact.'")

(citation omitted); Little 71 f.3d at 641 ("It is reasonable to assume that just as a district court is not required to 'scour the record looking for factual disputes,'...it is not required to scour the party's various submissions to piece together appropriate arguments.") (citation omitted); Waldridge, 24 F.3d at 923-24 (district court may strictly enforce Northern District of Illinois Local Rule 56.1 with respect to Exhibits J, K, L, and M, the Court will disregard those exhibits insofar as they are Referenced by Plaintiff in response to Defendant's motion.

Because no property supported facts or admissible Evidence exist to controvert Defendant's statement of Material facts, all properly supported statements included Therein are deemed admitted. See Lamz, 321 F. 3d at 683 ("We have consistently held that a failure to respond by the nonmovant as mandated by the local rules results in

an admission.") (citation omitted); N.D.I11.L. R. 56.1 (b) (3) (B) ("All materials facts set forth in the statement of the opposing party.").

Defendant develops, owns and manages Commercial Properties in and around Chicago, Illinois. Plaintiff was Hired by Defendant as a building engineer in June 2002 Upon his hiring, Plaintiff was assigned to a group of Building engineer in June 2002. Upon his hiring, Plaintiff Was hired assigned to a group of buildings, including a Facility located at 3 Hawthorne in Vernon Hills, Illinois. Initially, Plaintiff reported to Lead Engineer Jerry McGuire.10 After McGuire resigned in the Fall of 2002, Plaintiff reported to Defendant's newly hired Lead Engineer, Don Jordan. Plaintiff's formal education consists of a GED. Plaintiff Has over fifteen years of working experience working in The areas of heating, air conditioning, and refrigeration and Holds a

refrigeration certification from RSES, a

Refrigeration/engineering society. Prior to accepting

a

(10) McGuire reported to Jim Kelly, Area Engineer.

Kelly reported to Defendant's North Region Head

Engineer, Ray Facteau. Facteau reported to

defendant's Senior Asset Manager, Rick Staback

position with Defendant, Plaintiff (1) worked for Kraft Foods as a building engineer, (2) performed Building Maintenance for Motorola for three and a half years,11 and (3) completed various heating and air conditioning projects for Heat It/ Cool It from 1989 to 1994.

During the first week of October 2002, Plaintiff Complained to Olivia Stuart, Human Resources Representative for Brunswick Corporation (a tenant of one Employee, Jim Nelson, had made inappropriate comments To Plaintiff, including comments about Plaintiff allegedly "being gay". As a result of Plaintiff's complaint Brunswick disciplined Nelson. Additionally, Defendant independently interviewed witnesses concerning Plaintiff's complaint.

On January 9, 2003, Plaintiff received a written Warning from Jim Kelly, Area Engineer, following a Dispute between Plaintiff and his direct supervisor,

Jordan 12 Shortly thereafter, Kelly met with Plaintiff and Jordan on January 17,2003 to address the dispute. Kelly prepared prepared written summaries of Plaintiff's and Jordan's statements. 13 The dispute between Plaintiff and Jordan concerned Jordan's request that Plaintiff refused to comply with Jordan's request that Plaintiff provide him with one of Defendant's log books. Jordan allegedly informed Plaintiff that if Plaintiff refused to comply with Jordan's request, Jordan would call the police. According to Jordan, Plaintiff refused to provide Jordan with the Requested log book and said " fuck you" to Jordan. Plaintiff Does not dispute saying "fuck you" to Jordan.

(11) Plaintiff filed a race discrimination charge with the Equal Employment Opportunity Commission against Motorola. After Settling with Motorola, Plaintiff executed a withdrawal of his EEOC charge.

(12) Jordan did not work for Defendant prior to the date

that Plaintiff complained about Nelson to Brunswick.

(13) Plaintiff has admitted that the statement he provided to Kelly is true and accurate.

On January 27,2003, Kelly provided Plaintiff with a Memorandum that directed Plaintiff to improve his Performance within forty- five days, or face termination. Plaintiff received a copy of the memorandum, but refused to Sign the document because he did not believe that Kelly's Warning was justified.

Plaintiff left work early on January 29, 2003, taking a partial Sick day. Plaintiff also called Kelly on January 29,2003 to let Him know that Plaintiff would be taking sick days on January 30, 2003 and January 31, 2003, and he would return to work on February 3, 2003 with a note from his doctor. Nevertheless, Plaintiff arrived at work on January 31, 2003 to pick up his Paycheck. That same day, Plaintiff's cell phone was found in The parking lot of a building managed by Defendant.

Plaintiff did not report to work on February 3, 2003 or Notify Defendant of his absence. Kelly made several attempts to page Plaintiff, but did not receive an answer. Kelly informed Senior Asset Manager Rick Staback of

Plaintiff's absence and the Discovery of Plaintiff's cell phone. Staback prepared a letter to Plaintiff advising him that Defendant was presuming that Plaintiff had terminated his employment with Defendant. Plaintiff acknowledges receiving Staback's letter. On some date propr to February 5, 2003, Staback received an EEOC charge filed by Plaintiff against Defendant. After Receiving the charge, Staback met with Plaintiff on February5, 2003 and February 6, 2003 at Defendant's offices. 14 During the February 5 and February 6 meetings, Staback informed Plaintiff that "because of ongoing problems....things were not working out" and

(14) Plaintiff is seventy-two inches tall and weighs 275 pounds, and admittedly was not intimidated by Staback who is seventy- three inches tall and weighs 175 pounds.

Suggested that Plaintiff accept a "severance arrangement" from Defendant. Staback initially offered Plaintiff thirty days of Severance pay with Plaintiff rejected as insufficient. Over the Course of the parties' February 5 and February 6 meetings, Defendant increased its settlement offer from thirty days of Severance pay to three months of severance pay, or $12,500.04 In fact, Plaintiff's unemployment claim, but negotiated an Additional month after consulting with a lawyer. 15 Defendant also agreed to accommodate Plaintiff's request that he be given a lump sum cash payment instead of being paid in increments over the three- month severance period. On February 6,2003 both Plaintiff and Staback signed the Parties' severance agreement. The two- page agreement Provided that Plaintiff would receive three months of his Salary on one lump sum, less applicable deductions, and Voluntarily withdraw his EEOC charges. It also provided The Plaintiff would have twenty-one days to decide

whether to Sign the agreement and an additional seven days to revoke the Agreement. The severance agreement further advised Plaintiff To consult a lawyer prior to signing the same. Staback offered Plaintiff a copy of the severance agreement, but Plaintiff Declined to take a copy. Plaintiff returned to Defendant's office on February 14, 2003 (after the seven-day revocation period had expired) to collect his severance check. 16 Plaintiff received his severance check on that date and endorsed the same. Honoring his contractual obligation to withdraw his EEOC charges against Defendant, Plaintiff also executed an EEOC Withdrawal Form on February (15) Plaintiff contacted a lawyer, Ross Peters, on February 5, 2003 to obtain information and advice about his rights because he believed that he was wrongfully discharged. Plaintiff and Peters also discussed the issue of severance pay.

(16) Plaintiff also spoke to Peters on February 14, 2003.

In doing so, Plaintiff understood that the EEOC would withdraw his charge of discrimination. In fact, Plaintiff notified Defendant's counsel on March 4, 2003 that his EEOC charge against Defendant had been withdrawn at Plaintiff 's request.

Although Defendant expressly agreed that it would not contest Any unemployment claim filed by Plaintiff on or after April 1, 2003, Plaintiff filed an unemployment claim in February 2003.Notwithstanding the terms of the severance agreement, Plaintiff also refilled a substantially similar charge of Discrimination and retaliation against Defendant with the EEOC on July 8,2003. Plaintiff claims that he refiled his EEOC charge because he believes Defendant violated the law By "forcing {him} to sign something by using unemployment As a pawn." 17

Analysis

Prior to examining the factual and legal bases for Plaintiff's Title VII claims, the Court must first determine

whether those Claims were waived by Plaintiff when he signed the February 6 Severance agreement. Defendant argues that by signing the February 6 severance agreement, Plaintiff knowingly and Voluntarily released and waived the Title VII claims that he is Presently asserting against Defendant. This Court agrees. I. Title VII- Race Discrimination and Retaliation It is well- established that "a plaintiff may waive a claim Under Title VII... as part

(17) Plaintiff now denies having read the parties' February 6 severance agreement, and claims that he instead" went by the words that {Staback} said" and signed the document so that he he could be released to file his unemployment claim which was the "only concern that {Plaintiff} had...." Nevertheless, Plaintiff has not returned or reimbursed Defendant the $12,500.04 severance payment provided to Plaintiff on February 14, 2003.

Of a voluntary settlement, provided that her consent to the Release was voluntary and knowing."18

Wagner v. Nutrasweet Co., 95 F.3d 527,532 (7th Cir. 1996) (citation omitted); see also Riley v. Am. Family Mut. Ins. Co., 881 F.2d 368, 371 (7th Cir. 1989) (same). When determining whether a plaintiff's release of her Title VII claims was knowing and voluntary," the Court "must examine the totality of circumstances' surrounding the execution of the release."

Pierce v. Atchison, Topeka & Santa Fe Ry. Co., 65 F.3d 562, 571(7th Cir. 1995) ("Pierce I"). In doing so, the Court looks to a number of factors… including, but not limited to:

(1) the employee's education and business experience; (2) the employee's input in negotiating the terms of the settlement; (3) the clarity of the agreement; (4) the amount of time the employee had for deliberation before signing the release; (5)whether the employee actually read the release and considered its terms before signing

it; (6) whether the employee was represented by counsel or consulted with an attorney; (7) whether the consideration given in exchange for the waiver exceeded the benefits to which the employee was already entitled by contract or law; and (8) whether the employee's release was induced by improper conduct on the defendant's part. Pierce I, 65 F. 3d at 571 (citations omitted); see also Nobles v.Discover Fin. Servs ,Inc, No.02- 2446, 2003 WL 22326584 at *3 (N.D. I11. Oct. 9, 2003) (same).

Initially, Plaintiff" must come forward with specific Evidence Sufficient to raise a question as to the validity of the release Under the totality approach..." Pierce v Atchison Topeka & Santa Fe RY.Co. 110 F. 3d 431, 438 (7th Cir. 1997) Pierce II). Indeed, " {a} bald assertion of misrepresentation by the employer, standing alone, is legally insuffucuent." Id. (citation omitted). As discussed above, Plaintiff has failed To offer any admissible evidence that suggests Plaintiff did not knowingly and

voluntarily release and waive his Title VII claims. This alone would justify a

(18) Underlying this rule is an important federal policy: the encouragement of voluntary settlement of claims." Pierce v Atchison, Topeka & Santa Fe Ry. Co, 65 F.3d 562, 572 (7th Cir, 1995) (Pierce I").

Finding that the February 6 severance agreement constituted a Valid enforceable waiver of Plaintiff's Title VII race Discrimination and retaliation claims.

Even if the Court were to continue its analysis and presume That Plaintiff had met his burden of production, the result Would not change. While it is true that " the party seeking to Enforce a waiver of... rights...bear{s} the burden of proving Knowing and voluntary consent{,}" the Court is convinced That Defendant would be able to satisfy its burden. See Pierce II, 110 f. 3d at 438.

A. Representation by and/or Consultation with counsel

Discussion begins here because "a plaintiff who executes a release pursuant to the advice of independent counsel, or a party whose attorney actively negotiates the release, is presumed to have executed the document knowingly and voluntarily absent claims of fraud and duress." Pierce I, 65 F .3d at 571 n.1(citation omitted); see also Riley,881 F.2D at 372 ("This Court has similarly refused to allow a plaintiff to escape the consequences of a Title VII settlement entered

into under the advice of the plaintiffs chosen counsel, although the Court was careful to note that competency of counsel is not an appropriate inquiry to consider in evaluating whether a settlement is knowingly reached.") Donelson v. City of Chicago,272 F.Supp.2d 717,728(N.D.Ill. 2003)("Where the plaintiff,with the advice of independent counsel, executes an unambiguously-worded release of Title VII rights, the settlement is deemed voluntary and knowing-and hence,binding.")(citation omitted).Here, the February 6 severance agreement expressly advised Plaintiff"to consult with an attorney before signing[the same]." The facts indicate that Plaintiff heeded that advice. Indeed, Plaintiff spoke with an attorney, Ross Peters, about the termination of his employment on two occasions. Initially, Plaintiff spoke with Peters on February 5, 2003 to discuss his legal rights with respect to his termination of his employment and the issue of severance pay. That conversation took place after Plaintiff received defendants initial settlement offer from Rick Staback. Plaintiff also spoke with Peters on February 14,2003 to inform Peters that he had negotiated and signed a severance agreement with Defendant,

received his severance pay, and would no longer need Peters services. These Facts establish that Plaintiff had access to and consulted with an attorney throughout the negotiation and signing of the severance agreement (in addition to the revocation period following to signing of the same). Accordingly, this Court will presume that Plaintiff knowingly and voluntarily released and waived his Title VII claims. In light of the fact that Plaintiff has failed to present any admissible evidence to overcome this presumption, the Court is justified in concluding that Plaintiffs release and waiver are valid and enforceable.

B. Education and Business Experience

Plaintiff received the equivalent of a high school education, as evidenced by his GED. He also has over fifteen years of experience working in the heating, air conditioning, and refrigeration fields and holds a refrigeration certificate from a refrigeration/engineering society. With no admissible evidence to the contrary, the court finds that Plaintiffs educational and professional experience favors Defendant.19 Indeed, at least one court in this district has stated that "[a] high school

education is usually deeded sufficient to weigh the....factor in the defendants favor." Nobles, No.2-2446,2003 WL 22326584,at *3 (Work experience...bolster[s] this determination.") (citations omitted).

C. Input in Negotiating Terms of Severance Agreement

The Nobles court also found that "[t]he second factor... can indicate knowledge and

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(19) The fact that Plaintiff filed an EEOC charge against Motorola also favors Defendant because it establishes that Plaintiff had experience with filing an EEOC discrimination charge against an employer and settling/withdrawing the same.

voluntariness when employees

actively negotiate portions of the severance package."

Id.(citation omitted). Here, Plaintiff actively negotiated the severance agreement with Defendant. In fact, Plaintiff participated in two days of meeting during which he negotiated (1) an additional two months of severance pay, (2) the distribution of his severance pay in one lmp sm, and (3) an agreement that Defendant would not contest any unemployment claim filed by Plaintiff on or after April 1,2003. 20 These examples of active negotiation with respect to the severance agreement (and accompanying release and waiver of claims) strongly favor Defendant.

D. Clarity of Severance Agreement

The February 6 Severance Agreement consists of only two pages and explicitly provides:

If you sign this letter which releases any and all claims that you have or may have against Hamilton,...we offer the following severance package: 1. Three (3) months salary in one lump sum, less applicable deductions, payable to you on the eighth day after you sign this Agreement. 2ment has elapsed.. One

vacation day... 4. We will provide neutral references for you. 5. We will not contest your unemployment claim filed on April 1, 2003 after the three months severance pay has elapsed.

In exchange for the consideration provided above, you agree to the following: 1. On your own behalf of your heirs, executors, sucessors and assigns, you release and forever discharge Hamilton and all its affiliated entities and any and all of its officers, partners, directors, employees, shareholders, affiliated companies, attorneys,sucessors,and assigns, from

(20) Plaintiffs active participation in these meetings also belies his bald assertion that he was " under medication causing unclear thought" at the time he signed the severance agreement.

any and all claims or actions, at law or in equity, judicial or administrative, depts.,sums of money,accounts,judgments, or demands which have arisen or may arise related to your employment with or termination from Hamilton on or before the date of this agreement, including but not limited to any tort or contract claims, or claims under…Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Civil Rights Act of 1866,…Illinois Human Rights Act, retaliatory discharge and any other local,state or federal statute, ordinance, regulation or common law. You acknowledge and understand that you have been fully compensated for all the time in
which you preformed services with us in accordance with all state, federal and local wage and hour laws. 2. You voluntarily agree to withdraw your EEOC Charge NO. 210 a 301645, corresponding IDHR Charge, or any other claim or charge against Hamilton or any of its related entities or partners. You further agree to send the Voluntary Withdrawal Request Form, attached as Exhibit A, to the EEOC in the attached envelope today, February 6. These provisions explain in great detail that by signing the agreement and accepting the severance benefits

Plaintiff was releasing, waiving, and/or foregoing any and all claims, including any Title VII claims, he had asserted or may possibly assert against Defendant. That Plaintiff understood these provisions is evidenced by, inter alia,(1)Plaintiffs subsequent withdrawal of his EEOC charge against Defendant and (2) the fact that plaintiff informed his attorney on February 14, 2003 that he was "going to stop the situation...because[he] signed the severance agreement." Accordingly, this factor also favors Defendant.

E. Amount of time Plaintiff had for Deliberation Prior to signing Severance agreement Plaintiff was given twenty one days to consider the terms of the severance agreement prior to signing it and another seven days after signing the agreement to revoke the same. Moreover, the agreement expressly provided that the seven day revocation period could not be waived and that Plaintiff could not receive his severance benefits until it had expired. Because the Court has not been provided with any evidence that suggests Plaintiff was not afforded sufficient time to make his decision, this factor favors Defendant.

F. Whether Plaintiff Actually Read the Severance Agreement and Considered its Terms Prior to Signing It

Plaintiff baldly asserts that he did not read the severance agreement prior to signing it. 21 While this contention may help to bolster Plaintiffs suit, it does not preclude a finding that Plaintiff knowingly and voluntarily released and waived his Title VII claims. First, Plaintiff was offered a copy of the severance agreement, but chose not to take it. It would be unjust to penalize Defendant for Plaintiff's foolhardy decision. Second, Plaintiff was given up to twenty eight days (twenty-one days prior to signing the agreement, and seven days after signing the agreement)to read and review the agreement. His failure to do so indicates that he never intended to read and review the agreement. Finally, Plaintiff consulted with an attorney on two occasions about the termination of his employment and the issue of severance pay. Therefore, it is reasonable to conclude that Plaintiff had access to assistance in reviewing the agreement should he have desired to do so. While in some cases a

plaintiffs failure to read the agreement would favor a finding that the release and waiver included therein were not knowing and voluntary, it would be unjust in this case to penalize Defendant for Plaintiffs own decision and actions. Since no evidence was offered to establish that Plaintiff did not have time to read the agreement, was not afforded the opportunity

(21) The February 6 severance agreement specifically provides that "[b]y signing this letter Agreement, [Plaintiff] acknowledge[s] that[he has] read it and understand[s] it..." Therefore, Plaintiffs signature at the bottom of the agreement arguably belies Plaintiffs unsubstantiated claim that he never read the agreement. Nevertheless, the Court will abide by its duty to construe all facts and draw all reasonable inferences in Plaintiffs favor.

To read the agreement, or received advice that he should not or need not read the agreement, this factor favors Defendant. See Peirce I, 65F.3d at 572(recognizing an"important federal policy:the encouragement of voluntary settlement of claims").

G. Whether Consideration Given in Exchange for Waiver Exceeded Benefits to Which Plaintiff was Already Entitled by Contract or Law In exchange for his release and waiver of his legal claims, Plaintiff was provided, inter alia, three months of severance pay($12,500.04), one vacation day, and an agreement not to contest his unemployment claim filed on or after April 1,2003. No evidence has been offered to suggest that these benefits were already owed to Plaintiff under an existing contract or the law. In fact, Defendant has provided evidence that all of the above-listed benefits were specifically provided to Plaintiff in exchange for the aforementioned release and waiver. Therefore, the Court must conclude that consideration above and beyond what Plaintiff was owed by contract or under the law is present here. 22

H. Whether Plaintiffs Release was Induced by Improper Conduct on Defendants Part Plaintiff argues in his brief that he signed the severance agreement"under duress" because he had no choice but to sign the severance agreement or have[his] unemployment stopped and get unfavorable references to further employers." He also claims that he was " under medication causing unclear thought" at the time he signed the agreement. As an initial matter, Plaintiff offers absolutely no admissible evidence to substantiate these arguments. For the reason alone, they may

(22) It is worth mentioning that Plaintiff never returned the severance pay he accepted in exchange for the release and waiver of his legal claims. See Rinaldi v. World Book,Inc., No.00C 3573,2001 WL 477145, at *6(N.D. Ill. May 3, 2001) ("By retaining the benefits, plaintiffs ratified the release, and they cannot now void the contract") (citations omitted).

Be disregarded. Additionally, while "[d]uress is a defense to an otherwise valid contract[,]" [d]uress is not shown by the fact that one was subjected to mere annoyance, vexation, personal embarrassment, a difficult bargaining position or the pressure of financial circumstances. There must have been some imposition, oppression, undue influence, or the taking of undue advantage of the business or financial stress or extreme necessities or weakness[es] of another. Pierce I, 65 F.3d at 569(citation omitted). As stated in Pierce I, the "pressure of financial circumstances" imposed by a potential denial of unemployment benefits and the "personal embarrassment" that may result from unfavorable employment references would not constitute duress even if such pressure and embarrassment could be substantiated. Finally, "one cannot successfully claim duress as a defense to a contract when he had an alternative to signing the agreement." Id. Here, Plaintiff could have continued to pursue the EEOC charge and filed a claim for unemployment benefits despite the fact that Defendant may have contested the same. Because he had

alternatives to signing the severance agreement, his duress defense fails. Because the facts set fourth by Defendants do not suggest that Plaintiff was subjected to any improper conduct on the part of Defendant, this factor favors Defendant. An analysis of the totality of the circumstances establishes that Plaintiff knowingly and voluntarily released and waived his Title VII claims against Defendant. Because each of the Pierce I factors, the admissible evidence, and all of the substantiated facts considered by the Court favor Defendant, the Court finds Plaintiff release and waiver to be valid and enforceable. In light of that finding, there is no need to evaluate the merits of Plaintiffs Title VII claims and summary judgment may be granted. See Cerutti,349 F.3d at 1060.

II. Breach of Plaintiffs Severance Agreement

Because summary judgment will be entered in favor of Defendant on all of Plaintiffs federal claims, the Court declines to exercise supplemental jurisdiction to decide Plaintiffs state law claim for breach of the February 6 severance agreement. See 28 U.S.C.&1367©; Ryan v. Ill.

Dept of Children & Family Servs., 185 f.3d 751,764-65(7th Cir.1999) ORDERED; Defendants motion for summary judgment [38] is granted. Judgment will be entered in favor of Defendant on Plaintiffs Title VII race discrimination and retaliation claims included in his Complaint of Employment Discrimination [1]. Plaintiffs state law breach of severance agreement claim is dismissed without prejudice. 28 U.S.C.&1367(c). Judgment will be set fourth on a separate document and entered in the civil docket. Fed. R. Civ. P. 58,79(a).

DATED: APRIL 06 2004

ENTER HON. GEORGE W. LINDBERG

APPENDIX C

United States Court of Appeals

For the Seventh Circuit

September 10, 2004

before Hon. DANIEL A. MANION, Circuit Judge

DARRYL KINNEY Appeal from the United

PLAINTIFF-APPELLANT States District Court for

V. NO.04-2122 the Northern District of

HAMILTON PARTNERS Illinois, Eastern Division

DEFENDANT-APPELLEE No. 03 c 3905

George W. Lindberg. Judge

The following are before the court:

1. MOTION TO RECONSIDER MOTION TO SUPPLEMENT RECORD WITH DON JORDAN CONFESSION TAPE, filed on August 25,2004, by the pro se appellant.

2. MOTION TO SUPPLEMENT RECORD WITH TRANSCRIPT OF DON JORDAN CONFESSION TAPE, filed on September 7,2004, by the pro se

appellant. IT IS ORDERED that #1 and #2 are

DENIED.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF IILINOIS

OFFICE OF THE CLERK

DARRYL W, KINNEY

1910 BUCKERIDGE COURT

GURNEE, ILL. 60031

CASE NUMBER 1:03-cv-03905

TITLE: KINNEY V. HAMILTON PRT

ASSIGNED JUDGE: HON. George W. Lindberg

MINUTE ORDER of 8/31/04 by Hon. George W. Lindberg: Plaintiffs motion to supplement record with transcript of confession tape of Don Jordan is denied [70-1]. The court previously ordered the docket clerk to supplement the record on appeal with document number 26, See 7/14/04 order. Additionally, the transcript enclosed with plaintiffs motion was never properly and timely submitted to this court and, therefore does not appear on the civil docket for Case No. 03c 3905. As such , it will not

be added to the record on appeal. Mailed notice

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF IILINOIS

OFFICE OF THE CLERK

DARRYL W, KINNEY

1910 BUCKERIDGE COURT

GURNEE, ILL. 60031

CASE NUMBER 1:03-cv-03905

TITLE: KINNEY V. HAMILTON PRT

ASSIGNED JUDGE: HON. George W. Lindberg

MINUTE ORDER of 8/9/04 by Hon. George W. Lindberg: Plaintiffs motion to supplement record with confession tape of Don Jordan is denied[68-1]. The court previously ordered the docket clerk to supplement the record on appeal with document numbers 26 and 28. See July 14,2004 order. Additionally the tape recording enclosed with plaintiffs motion was never properly submitted to this court and, Therefore, does not appear on the civil docket for case no. 03c 3905. As such, it will not

be added to the record on appeal. See 1/16/04 order(Additionally, plaintiff has submitted a tape recording labeled "Don Jordan Confession of Hamilton Partners Activity in Retaliation Against Darryl Kinney" as an exhibit to his summary judgment motion(s) without first obtaining the courts permission to do so. Is plaintiff wishes to submit the recordings contained on that tape in support of his summary judgment motion(s), plaintiff must transcibe the tape into a written document and submit the written transcript in place of the tape.) Mailed notice

[redacted]

Memo

To: ILLINOIS SUPREME COURT,

From: DARRYL KINNEY

CC: HON. JUDGE GEORGE LINDBERG,

APPELLATE

JUDGE HON. DANIEL A. MANION

Date: 4/1/2005

Re: CASE 03C 3905, 04-2122 (KINNEY v

HAMILTON PARTNERS)

THIS MEMEO IS TO MAKE A TWO PAGE CHANGE IN THE PREVIOUSLY FILED MOTION FOR SUPERVISORY, WHICH SHOWS ADDITIONALLY THE OTHER NAMES RECEIVING THIS MOTION BOTH HON. JUDGE LINDBERG AND HON. JUDGE DANIEL A. MANION.

THANK YOU.

ILLINOIS SUPREME COURT

KINNEY, DARRYL W.,

Plaintiff,

Docket No.04 2122

v. Case No. 03C 3905

Judge Lindberg

HAMILTON PARTNERS, Appellate Judge

Daniel A. Manion

Defendant.

Motion for Supervisory

Plaintiff Darryl Kinney ask the Supreme Court to intervene into the Proceedings of the for mentioned civil case currently in the 7th Circuit Court of Appeals Hon. Judge Daniel A. Manion, from the lower court of the Northern District Hon. Judge George W. Lindberg presiding. I ask the court to review the evidence that will prove once and for all who has been telling the truth in this case and have been denied the entry of the tape and the transcript. I have attached orders and my brief, and a copy of the tape in question along with the tape in transcript for as requested by Hon. George W. Lindberg. I know once heard my 3 year case that was given a Summary Judgment

to the defendant will be over with my case reversed to my favor. I have been the only one with real evidence and have to yet have it all added to the record or have any Judge act as if a Pro Se even matters. See Rule 329 Amendment of Record on Appeal.

Dated: September 15, 2004

Darryl Kinney

By:

Pro Se

847-338-0234

Darryl Kinney

1910 Buckeridge Ct.

Gurnee, Illinois 60031

AFFADAVIT OF AUTHENTICITY

I DARRYL KINNEY CERTIFY THAT ALL

DOCUMENTS HERE

AND TAPES ARE AUTHENTIC COPIES OR ORIGINALS

OF MATERIAL ENTERED IN NORTHERN DISTRICT

COURT AND THE COURT OF APPEALS.

DARRYL KINNEY

PLAINTIFF PRO SE

September 15, 2004

IN THE UNITED STATES DISTICT COURT

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Darryl Kinney

V

Hamilton Partners Case 03c 3905

Judge Lindberg Magistrate Judge Mason

MOTION TO SUPPLEMENT RECORD

WITH CONFESSION TAPE OF DON JORDAN

Plaintiff, Darryl Kinney acting as Pro Se herein moves pursuant to F.R.C.P. 10 to supplement the record by adding an Exhibit that had been introduced through out my case in your court and was granted with my previous Motion to supplement Record but was not sent with my record so I am entering it again alone to stop any confusion that the court seems to be experiencing with this Exhibit. It was entered in court and I was asked to write the contents or parts of the tape Doc. 36, 01/30/2004 and was talked about in the entire case before Judge Lindberg and I have sent two copies of this tape during proceedings,

So this tape is no mystery to this court, The previous minute order where I supplied the court with all exhibits including the tape again. I've been told to pick the tape up at Judges chambers and or have it sent to me well this is court where evidence is heard to get to the truth and that's what I looking for the justice and truth of court.

Minute Order dated 6/16/04- 7/14/04

Docket #	Date	
*26	01/16/2004	*Exhibit J Don Jordan Tape on reverse side of order
28	01/30/2004	

Dated this 2 day of August, 2004

1910 BUCKERIDGE CT.

GURNEE,IL 60031

847-338-0234

DARRYL KINNEY(PRO SE)

UNITED STATES COURT OF APPEALS

FOR THR 7TH CIRCUIT

KINNEY, DARRYL W.

Plaintiff,

Docket No.04 2095

v. Case No. 03C 3905

Judge Lindberg

HAMILTON PARTNERS, Magistrate Judge Mason

Defendant,

MOTION TO SUPPLEMENT RECORD WITH

TRANSCRIPT OF DON JORDAN CONFESSION TAPE

This is a Plaintiffs Motion to Supplement Record with a transcript of Don Jordan confession tape. Plaintiff ask that the court of Appeals to consider again that Plaintiff is only seeking the justice that he is afforded by the civil rights acts as well as employment acts, and has not yet received. And after sending the transcript to Judge Lindberg he still will not let my evidence in so justice can be served when it was he who stated to do so.

1. As a Plaintiff I have not been given the same consideration by agencies Court Reporters, Transcribers, etc. and in saying this after Judge Lindberg gave me the

Order to transcribe the tape not one agency with the exception of two after calling ever listed agency from A to Z that would not do it because they finally got enough Attorney work would do this job on the basis of me being a Pro Se litigant, and after Judge Lindberg's last order 8/9/2004 denying my Motion To Supplement Record and stating again to transcribe it. I went to the Waukegan Courthouse and walked into the first court that was in session and told the court clerk there the situation I was facing and was given a name of an agency that would do the tape for me and the tape is being done now but not because of me not wanting to do what the Judge asked but because no one would do it.

2. Also in following what the Judge asked each one of my Motions for Summary Judgment do have transcribed asserts of comments on the tape and I mention each assert is on that same tape so it is a very pertinent part of the proceeding and even used to call tape Exhibit J in these Motions and all Motions that refer to it.

3. A plaintiff can prove there case when all evidence

mentioned in a case is heard and this is up to the presiding Judge not the Defendants attorney to dictate the Judge's position.

4. I have the phone records with name, number and time for who this was for the recording from my phone company. This was the only time we talked after I was fired from my job. But I was called 6 times a day by Don Jordan until I finally returned his call, I had no need to talk to anyone who assisted in the mistreatment of myself for my employers reasons.

5. Rule 301. Method of Review Every final judgment of a circuit court in a civil case Is appealable as of right. The appeal is initiated by filing a notice of appeal. No other step is jurisdictional. An appeal is a continuation of the proceeding. Thus giving me the right to have evidence admitted since there was no date of deadline given and Plaintiff as stated could not get a transcript done. And on these grounds I as for leniency until the tape is transcribed or that the tape itself be heard.

Dated: September 3, 2004

Darryl Kinney (65)

By:

Pro Se

847-338-0234

Darryl Kinney

1910 Buckeridge Ct.

Gurnee, Illinois 60031

UNITED STATES COURT OF APPEALS

FOR THR 7TH CIRCUIT

KINNEY, DARRYL W.

Plaintiff,

Docket No.04 2095

v. Case No. 03C 3905

Judge Lindberg

HAMILTON PARTNERS, Magistrate Judge Mason

Defendant,

MOTION TO RECONSIDER

MOTION TO SUPPLEMENT RECORD WITH

DON JORDAN CONFESSION TAPE

The order of Hon. Daniel A. Manion is a denial to Plaintiffs Motion to Supplement Record with Don Jordan confession Tape. Plaintiff ask that the court of Appeals RECONSIDER MOTION TO SUPPLEMENT RECORD WITH DON JORDAN CONFESSION TAPE on the following grounds.

6. As a Plaintiff I have not been given the same consideration by agencies Court Reporters, Transcribers, etc. and in saying this after Judge Lindberg gave me the Order to transcribe the tape not one agency with the

exception of two after calling

ever listed agency from A to Z that would not do it because they finally got enough Attorney work would do this job on the basis of me being a Pro Se litigant, and after Judge Lindberg's last order 8/9/2004 denying my Motion To Supplement Record and stating again to transcribe it. I went to the Waukegan Courthouse and walked into the first court that was in session and told the court clerk there the situation I was facing and was given a name of an agency that would do the tape for me and the tape is being done now but not because of me not wanting to do what the Judge asked but because no one would do it.

7. Also in following what the Judge asked each one of my Motions for Summary Judgment do have transcribed asserts of comments on the tape and I mention each assert is on that same tape so it is a very pertinent part of the proceeding and even used to call tape Exhibit J in these Motions and all Motions that refer to it.

8. A plaintiff can prove there case when all evidence mentioned in a case is heard and this is up to the presiding

Judge not the Defendants attorney to dictate the Judge's position.

9. I have the phone records with name, number and time for who this was for the recording from my phone company. This was the only time we talked after I was fired from my job. But I was called 6 times a day by Don Jordan until I finally returned his call, I had no need to talk to anyone who assisted in the mistreatment of myself for my employers reasons.

And on these grounds I as for leniency until the tape is transcribed or that the tape itself be heard.

Dated: August 23, 2004

Darryl Kinney

By: _____

Pro Se

847-338-0234

Darryl Kinney

1910 Buckeridge Ct. Gurnee, Illinois 60031

APPENDIX D

Darryl Kinney and Don Jordan

OPERATOR; You have reached the Sprint Voice Mailbox of 815/403-6954. To leave a voice message press 1 or just wait for the tone.

Darryl Kinney; Hello Don this is Darryl Kinney. And if you want to know why you was fired you should ask Rick. Rick is cleaning house of everybody that was involved in this little scandal that I was fired for, which I had no reason to be written up and then fired while I was off from work. It's been in federal court. He's cleaning house by getting rid of all of his loose ends which included you, probably Jim, Mike and (inaudible) yourself because all four was involved in this lying scandal that you guys had going. That's not the way business is done. And there you go. Don Jordan: Hello. Darryl Kinney: Yeah Don this is Darryl. Don Jordan: Hey buddy. How's it going?

Darryl Kinney: It's going. Don Jordan: Yeah?

Darryl Kinney: Yeah.

Don Jordan: So well I didn't know if you knew about what's going on or not but (inaudible) you know and you were right

about quite A few things and there's no support (inaudible).

Darryl Kinney: So if you stand behind me I got a question for you, cause you don't work for them no more so it really don't matter.

Don Jordan: Yeah, I (inaudible) about that..

Darryl Kinney: Give me, I mean if this doesn't nothing to do with you no more give me a copy of your union card cause they're saying even through your union lawyers said that they knew all along--

Don Jordan: The who?

Darryl Kinney: The union lawyer that told me that Hamilton Partners knew you was in the union all along.

Don Jordan: Yeah.

Darryl Kinney: But I'm not trying to get her into court so would You give me a copy of your card?

Don Jordan: You know (inaudible)?

Darryl Kinney: Yeah.

Don Jordan: I mean (inaudible) ?

Darryl Kinney: Yeah.

Don Jordan : I mean (inaudible) (inaudible) just so you know--

Darryl Kinney: I mean basically--

Don Jordan: Just so you know--

Darryl Kinney: -- okay.

Don Jordan: -- that's not what I mean. They just made that up.

Darryl Kinney: Oh I know they made everything up. I knew that but see now that we're in court I have to prove that they made it up.

Don Jordan: Oh it ain't that. I mean they told me once they hired me on to (inaudible).

Darryl Kinney: I knew it. I knew it.

Don Jordan: I said why? And I told them I wasn't going to do it and then I (inaudible) and said you kind of got burned (inaudible) really

I wasn't, you know. But they were pushing for it.

Darryl Kinney: I got a question, who made Mike? I mean why Would Mike-- see, why did Mike even-- well, I guess if they had you doing it, they had you do it too.

Don Jordan: Why did Mike what?

Darryl Kinney: Lie and say that I tried to get him into the union?

Don Jordan: Oh, I -- they're the crookedest (inaudible) sons of Bitches I ever met in my life, you know.

Darryl Kinney: Believe me, I've learned this now.

Don Jordan: You know I mean I (inaudible) different stuff, you know and they (inaudible) out, So you know they're some Rotten sons of bitches.

Darryl Kinney: Believe me, I wouldn't be in court if they wasn't. I don't think they -- if they wanted -- you know the law is that if want to fire somebody you can just fire them, but the shit that they took me through--

Don Jordan: Right.

Don Kinney: -- man that's ridiculous.

Don Jordan: (Inaudible) union thing never came up I wish they never would have-- if you would have never brought it up, I wasn't going to sit there and say obviously, you know. But they were looking for anything and (inaudible).

Darryl Kinney: Dude listen to me I know they was cause they Started making it up.

Don Jordan: Oh yeah I mean they absolutely, they absolutely Did and I'll, I (inaudible) you're free to (inaudible) me as a

Witness and I will be a (inaudible) witness. I got to watch what I say to you without being subpoenaed.

Darryl Kinney: Yeah, right.

Don Jordan: You might be very surprised to what I might have to say (inaudible) you know cause I and I you know, signed that Confidentiality agreement with them and, but--

Darryl Kinney : Why would they have you do this shit? I mean dude, Look how crooked these guys are?

Don Jordan: Oh, they're the biggest crooks. They all should be in jail as far as I'm concerned..

Darryl Kinney: Dude, they belong there all of them. I know this.

Don Jordan: (Inaudible) really do.

Darryl Kinney: If me, me and the court system works the right way they will be.

Don Jordan: (inaudible).

Darryl Kinney: At least a couple of them will be.

Don Jordan: I think they should be. Just like you know (inaudible)And they went after me because I was getting close to finding out about how they were, you know scamming

money, how they were taking brides and how they, you know I was getting way too close to knowing too much.

Darryl Kinney: Yeah, well I already knew that when they started--when Jim and he had (inaudible) -- I know Jim Baker. When they had their little--

Don Jordan: Oh you're talking about (inaudible).

Darryl Kinney: -- side company going, when they had their little --

Don Jordan: Oh yeah.

Darryl Kinney: -- they wasn't really doing nothing.

Don Jordan: (Inaudible) yeah.

Darryl Kinney: I was like oh these guys are a bunch of--

Don Jordan: They're crooks.

Darryl Kinney: Yeah.

Don Jordan: (Inaudible) all out crooks. But anyway man I've Been trying to find out where you've been since you and your boy left there. I'll tell you, you know I never really got to (inaudible) I really wasn't. I was being pressured and -- but it wasn't me framing you. It wasn't--

Darryl Kinney: No I knew that --

Don Jordan : They would bring something up and then they

Would write you up. Did you notice I always signed everything as a witness. I was not complainant.

Darryl Kinney: Yeah but dude here is the thing. Why did they -- if they through they were doing the right thing why didn't they let me say something about it? They just wrote me up and made me take it.

Don Jordan : Yeah.

Darryl Kinney: They wouldn't-- well, cause if you lied about it why would you let somebody say something? I mean that doesn't, really don't make no sense.

Don Jordan: Right exactly, you know. And, you know and, you Know and I totally understand why you felt like you had to make an attack on me about the union thing you know. You're- it's like cause they're just fucking coming after you.

Darryl Kinney: Yeah.

Don Jordan: But you know that's -- you know but I couldn't sit there. You know I got a job. I couldn't sit there and say oh yeah I did that, You know.

Darryl Kinney: Yeah, but look at Mike.

Don Jordan: You understand that?

Darryl Kinney: I understand that cause you knew (inaudible) too.

Don Jordan: Right.

Darryl Kinney: But look at Mike, come on man. Now why would he, He-- I don't'--

Don Jordan: Oh I think, I think they uh, they pressured him to. There's no doubt in my mind. Uh, that other guy who replaced me--

Darryl Kinney: (Inaudible)

Don Jordan: (I mean (inaudible)

Darryl Kinney: Damn

Don Jordan: Yeah he couldn't take it. It's like you know what--

Darryl Kinney: But dude, I remember when you first started you told me I was the hardest worker they had. And dude I was busting--

Don Jordan (Inaudible)

Darryl Kinney: -- I was busting my ass for these people.

Don Jordan: No, (inaudible) were.

Darryl Kinney: And they screwed me.

Don Jordan: I never changed my mind about that. It was, you

know the only thing is I think they, I know they liked you Darryl and you But I think (inaudible) because it's going to get (inaudible).

Darryl Kinney: Yeah, but see dude--

Don Jordan: You know they were really (inaudible). They were Saying you know, they were probably making you think that and making me think (inaudible).

Darryl Kinney: Yeah, but I know (inaudible) Rick was the Mastermind. He was trying to --

Don Jordan: Oh he's a no good of a son of bitch.

Darryl Kinney : Oh no, he was the one who came up with this Whole plan to get rid of me because I made a complaint about Jim Nelson over there at Brunswick. And he--

Don Jordan: Oh yeah. You know that' s exactly why they told me.

Darryl Kinney: Oh.

Don Jordan: Yep. That's exactly why they told me, that you had a Business complaint against uh--

Darryl Kinney: Dude, but why didn't they just fire me and say -- Man do you know how much, dude do you know what it feels

like to come to work and know you're doing your job and no matter what they're putting their foot on your neck and screw you?

Don Jordan: No, I don't know because they did the same thing to me Darryl. I know exactly what it feels like. I filed (inaudible) against them (inaudible).

Darryl Kinney: Oh, you (inaudible).

Don Kinney: It's like (inaudible) more than there (inaudible) Because I reported them.

Darryl Kinney: Yeah.

Don Jordan: I report -- I went to the EEOC and reported them.

Darryl Kinney: Dude, I did the same thing.

Don Jordan: You know and then as soon as they got the notice after the (inaudible) days after they got the notice they fired me.

Darryl Kinney: They didn't do that, they got me two days after.

Don Jordan: Yeah, right. This is what I'm saying you know. And so I said --

Darryl Kinney : While I was at home sick. Didn't even let me come to work and do it. They did it while I'm at home sick.

Don Jordan: Yeah. You know, that was the worst fucking place That I've ever worked in my life.

Darryl Kinney: I tell you, I'm definitely going to (inaudible) Something.

Don Jordan: (inaudible) and I'm sorry things happened the way they did (inaudible) and I want you to know that.

Darryl Kinney: Right.

Don Jordan: I didn't have anything against you at all.

Darryl Kinney: Dude, I knew it wasn't you (personally). I knew There was a strange (inaudible and stuff but dude, it--

Don Jordan: There was never anything. They were pitting us Against each other and they were putting us in a place where you couldn't, you know they was backing us all, everybody into a corner and trying to get you really.

Darryl Kinney: Yeah I know and poor Leonard, Leonard this guy, I went by his house and he was telling me that they told him he can't talk to me. Dude, what the hell is that? You're a grown man and you're at home.

Don Jordan: Yeah. Yeah. Well Mike said the same thing today, They're still ordering him about you know they told him he

couldn't talk to me. Mike's like yeah, I'll talk to who I want to talk to.

Darryl Kinney: Damn.

Don Jordan: You know they told him that he can't talk to me or you.

Darryl Kinney: This is wild.

Don Jordan: Essentially, you know I can't believe these people Telling me , who I can and can't talk to on my personal business.

Darryl Kinney: Um-hmm.

Don Jordan: He goes but they're fire me. He goes if they find out I talked to you, Don they'll fire me.

Darryl Kinney: Yeah that's what, that's what, that's what Len said so you know I wasn't trying to put, I wasn't trying to put nobody on the spot so I would never tell him that he said anything to me.

Don Jordan: But I mean it's the truth through.

Darryl Kinney: Yeah it's the truth.

Don Jordan: I'm not lying to you. I mean you said they're son of Bitches.

Darryl Kinney: Oh yeah they're some dirty bastards.

Don Jordan: And they (inaudible) too, you know and, and like I Tell you (inaudible) and it's Rick.

Darryl Kinney: Yeah, (inaudible) too.

Don Jordan: They're some dirty bastards.

Darryl Kinney: Here's the thing, Mike and Len's still there. Guess what, it's only a matter of time dude. Once they do this they're going to clean house on them too.

Don Jordan: Oh Yeah. Yeah. Well Mike's got to get out of there Now you know, but he doesn't have, you know--

Darryl Kinney: Experience.

Don Jordan: -- real, yeah the experience and the skills he should Have and he's a little bit in a (inaudible) hot spot but (inaudible) right now.

Darryl Kinney: Oh.

Don Jordan: Um, I said well Mike I don't envy you cause you know I could give a fuck.

Darryl Kinney: I, dude, I only need (inaudible) you do, cause you know what kind of guy I am. They, if they (inaudible) like me they did when they wanted me to better Leonard, I was like

look , don't involve me in none of that crap, just don't do it. I'm (inaudible)

Don Jordan : Well I was the same way. I told them no but they, got things, how can I say this? Darryl --?

Darryl Kinney: All right.

Don Jordan: I always (inaudible) whatever, I understand, I Understand. I that they have been trying to (inaudible). I Understand that you know. But you know I had to see that myself.

Darryl Kinney: I was saying that too.

Don Jordan: You know it was like (inaudible). So anyway the One thing I want to say I'm sorry about the bullshit you know.

Darryl Kinney: Yeah, I appreciate that you know cause--

Don Jordan: (inaudible) and all of that shit but also going forward you know (inaudible) called in and I got a mouthful for them, you know and they know that too. They're fucking trying to make sure I stay the hell away from you.

Darryl Kinney: Cool.

Don Jordan: They know that I ain't taking fucking shit (inaudible).

Darryl Kinney: Man you know what, I had respect for Rick until he started lying. This dude is a lying bastard.

Don Jordan: He's the lying ass son of bitch I ever met in my life.

Darryl Kinney: Yeah.

Don Jordan: -- you're going to find out, the guy at the top is worse.

Darryl Kinney: (Inaudible).

Don Jordan: Because he's allowing it.

Darryl Kinney: Yeah, that's true.

Don Jordan: He's teaching them how to do it. So uh, just (inaudible)

You know since I've left --

Darryl Kinney: Yeah.

Don Jordan: -- I ran into all kinds if (inaudible). I mean they should

Be in jail. They were taking brides. Hey you know cause when they take bribes the money has been spent and then they charge the tenants that shit, right.

Darryl Kinney: Oh yeah they're bogus.

Don Jordan: Right, and so the tenants are getting ripped off and These people are criminals. They should be in jail.

Darryl Kinney: Um- hmm.

Don Jordan: That's all there is to it. I wish --

Darryl Kinney (Inaudible).

Don Jordan: Actually I did get together. I had the Department Of Labor in it --

Darryl Kinney: Yeah.

Don Jordan: -- and for all this over time shit, you know how They wouldn't tell you, you called in --?

Darryl Kinney: Right, right.

Don Jordan: Well Mike just called me and told me that they're Going to have to write him a check for -- for everybody, all the Engineers for like, I don't know $1,400.00.

Darryl Kinney : Oh, cause I remember they wanted you take a day off or something.

Don Jordan: Uh-huh, that's illegal. And I want to call the Department Of Labor on them too.

Darryl Kinney: (Inaudible) got to be too much.

Don Jordan: (Inaudible) but I'm like hey, fuck you. That just

Hurt me when they did this whole (inaudible).

Darryl Kinney: It sucked.

Don Jordan: And I'm like hey you know I'm like --

Darryl Kinney: Especially since I was giving them everything I Could. I was busting my ass for these people.

Don Jordan: And I'm saying you know, don't use me because I Refuse to be in -- don't (inaudible) they were using me and (inaudible) you.

Darryl Kinney: Yeah, I know.

Don Jordan: -- put me in a position where I would either you know Either A, lose my job or B (inaudible) one day. And I told you a long time ago, you know I said you know Darryl, (inaudible).

Darryl Kinney: Right. I remember you saying that and then all of a sudden, all the shit (inaudible).

Don Jordan: But they were making it that way. It wasn't me Making it that way, believe me. I mean they were putting me in a position that Jim would call and say -- and he was doing this on purpose. You know have Darryl to do this. I'm like okay. Well why don't you tell him? Well you're his boss. All right, I'll

have him go do it. And then you know and then (inaudible). So I says I'd call you. He said no I (inaudible). And I told him that already.

Darryl Kinney: Dude, I told the truth before he even hired me (inaudible).

Don Jordan: Right, right. But I don't know --

Darryl Kinney: Oh right, right.

Don Jordan: -- so I go all right you know Darryl says he (inaudible). The man's a butt.

Darryl Kinney: Yeah.

Don Jordan: It's like, you know so they were -- but they just used me.

Darryl Kinney: To try to throw these little things out there.

Don Jordan: Right, you know to kind of distanced themselves.

Darryl Kinney: Right.

Don Jordan: But no I'm a, I'm a pretty smart fucking person and Right now I hate the bastard. So I don't know what you got Going on. I don't know where you're at in the process.

Darryl Kinney: All right. Hey dome a favor?

Don Jordan: (inaudible).

Darryl Kinney: Do me a favor. I want you to do me a favor. Send me a copy of your card, you don't work for them no more so it really don't matter, right?

Don Jordan: No.

Darryl Kinney: Send it to my P.O Box.

Don Jordan: What is that?

Darryl Kinney: 1183 --

Don Jordan: Hold on (inaudible)

Darryl Kinney: Rick signed his name to, to this here crap.

Don Jordan: (inaudible) but you understand that. Okay. What is it?

Darryl Kinney: Uh, P.O Box 1183 --

Don Jordan: P.O. Box -- uh, so it's a P.O. --

Darryl Kinney: Yeah, Box 118--

Don Jordan: P.O. Box --?

Darryl Kinney: Yes.

Don Jordan: Okay, Box (inaudible) what is it?

Darryl Kinney: 1183.

Don Jordan: 1183.

Darryl Kinney: And that's North Chicago, Illinois.

Don Jordan: North-- is an N good enough or you got to write

The whole word?

Darryl Kinney: Yeah, I just put N.

Don Jordan: Okay, north--

Darryl Kinney: C-h-g-o, that's what I put.

Don Jordan: Illinois, okay.

Darryl Kinney: And 60064.

Don Jordan: 60064.

Darryl Kinney: And just my name, that's it.

Don Jordan: Yeah.

Darryl Kinney: And we'll be in touch with you because it will

Definitely be soon.

Don Jordan: Yeah (inaudible)

Darryl Kinney: All right.

Don Jordan: I will definitely be a friendly witness that's for

sure,

You know.

Darryl Kinney: Cool.

Don Jordan: They don't have power on me.

Darryl Kinney: All right.

Don Jordan: You know they still go (inaudible) and power on Mike and stuff like that.

Darryl Kinney: Yeah, I mean he still works for him.

Don Jordan: For Mike though it's a dirty, it was a dirty shame to. That's who I got your number from. He goes you know Darryl sent some kind of paper. I go, oh you have his number. I've been asking (inaudible) you got a fucking number? (inaudible)You know they got rid of him. It's like (inaudible) but you were saying (inaudible) call Len, call you know -- and I'm like fuck, he should have called me.

Darryl Kinney: Right.

Don Jordan: But anyway, I got your number and I'm glad I did.

Darryl Kinney: All right, dude.

Don Jordan: (inaudible) I think Mike will be a very friendly Witness too once we get this all out there.

Darryl Kinney: Actually Leonard, Leonard told me he's be a Friendly witness (inaudible) subpoenas. He said he can't say nothing without being served. We're working on it.

Don Jordan: I think everybody would be, you know.

Darryl Kinney : I know Nancy would.. Nancy knows.

Don Jordan: They're all scared I mean you know they're just scared.

Darryl Kinney: All right.

Don Jordan: All right buddy?

Darryl Kinney: Hey, hey take it easy.

Don Jordan: Yeah I just wanted to let you know that.

Darryl Kinney: All right.

Don Jordan: Not at all (inaudible).

Darryl Kinney: All right.

Don Jordan: And I hope everything comes out a little bit for you.

Darryl Kinney: Me too.

Don Jordan: Okay.

Darryl Kinney: All right thanks.

Don Jordan: You working now or -- ?

Darryl Kinney: No.

Don Jordan: No

Darryl Kinney: No

Don Jordan: What are you doing just--?

Darryl Kinney: Just looking.

Don Jordan: Oh really? (91)

Darryl Kinney: Yeah I've been interviewing everywhere.

Don Jordan: You've been out of work this whole time?

Darryl Kinney: Dude, the whole time. That's what's ticking me off.

Don Jordan: Oh shit (inaudible).

Darryl Kinney: Yeah I'm wondering just how much they-- cause you

Know that they--

Don Jordan: Oh, oh, oh yeah listen to this.

Darryl Kinney: (inaudible).

Don Jordan: Right. So Rick (Inaudible) calls right.

Darryl Kinney: Yeah.

Don Jordan: And I told him I was (inaudible). I know somebody else

That's very high up (inaudible.

Darryl Kinney: Right.

Don Jordan: (Inaudible) and I'm talking to him and he goes well, he

Said Rick said that if you (inaudible) all over the place.

Darryl Kinney: That's what I'm thinking is happening because dude,

I had a good name until I worked there.

Don Jordan: That's what he told me. Then the union called me. They said guess who, we got a call from? I said who, Said, Rick (inaudible)

Darryl Kinney: Oh really?

Don Jordan: Said uh, you're no good and (inaudible) you screw Everyone you've ever worked for and --

Darryl Kinney: This guy.

Don Jordan: I've never screwed anybody in my life that I've worked for and. And (inaudible they're smearing my name. I never (inaudible).

Darryl Kinney: You know that this guy is on the Lake County Partners which is part of half the companies in Lake County, don't you?

Don Jordan: What, part of what?

Darryl Kinney: Part of Lake County Partners? That's the, that's the Board, of all business, in Lake County. They're, they're board Members.

Don Jordan: No, I didn't know that.

Darryl Kinney: Yeah.

Don Jordan: I don't know too much about them. I just uh--

Darryl Kinney: I know and it aint good and that's why I'm Thinking I'm having such hard time all of sudden.

Don Jordan: Oh he, believe me he goes out of his way my man.

Darryl Kinney: Oh I know that.

Don Jordan (inaudible).

Darryl Kinney: Go ahead.

MS:

Don Jordan: (Inaudible) 10-4. Yeah (inaudible) I had to actually have something drawn up in the agreement that (inaudible) would not (inaudible)--

Darryl Kinney: Right.

Don Jordan: -- with what do you call that? I'll tell you what it is (inaudible).

Darryl Kinney: Oh cool.

Don Jordan: But I had to freaking, I had to bargain that with (inaudible) but he was calling everyone he knew. Luckily I am in the union and --

Darryl Kinney: See I didn't get to bargain anything. He used (inaudible) board but that's why we're in court with his crazy ass now.

Don Jordan: Yeah like I said, luckily I don't think I would have Got the work either if I wasn't in the union Darryl.

Darryl Kinney: Yeah, I understand.

Don Jordan: You know the union put me right to work and (inaudible) I was having the same problems you were having (inaudible) so I'm back to work you know.

Darryl Kinney: Um-hmm.

Don Jordan: Uh, even after I got back to work he contacted my Freaking (inaudible) employer (inaudible) and I'm like I just Told Him I said you know what (inaudible).

Darryl Kinney: There you go.

Don Jordan: -- and let's forget about what he told you, you know and-

Darryl Kinney: Start from day one.

Don Jordan: (Inaudible).

Darryl Kinney: Manipulate the situation.

Don Kinney: Yes, he is.

Don Jordan: Yeah and he's very evil with it.

Darryl Kinney: Yes, he is.

Don Jordan: But anyway that's--

Darryl Kinney: All right dude. I hear you're at work now so I Wont keep you on the phone too long.

Don Jordan: Yeah, but you know what it's good to hear from you.

I'm sorry you know, I actually when I first met you I said we're Going to actually become pretty good buddies.

Darryl Kinney: Who knew this company was going to turn into this. If I had -- you know what, now I even regret even saying Anything about that stupid bastard at Brunswick. But dude, if somebody is doing something you can't physically go do nothing him. That's what I'm supposed to do.

Don Jordan: Yeah, no you're right. That's exactly what you're Supposed to do.

Don Jordan: Yeah, no you're right. That's exactly what you're Supposed to do. But count your blessing you're gone from there and--

Darryl Kinney: Yeah.

Don Jordan: -- and you can deal with it. But what you got to do is--

Darryl Kinney: Yeah.

Don Jordan:-- this mother fucker goes around scaring people (inaudible).

Darryl Kinney: Yeah,

Don Jordan: And make him compensate you for the harm he's Caused (inaudible).

Darryl Kinney: Yeah.

Don Jordan: And make him compensate you for the harm he's caused (inaudible).

Darryl Kinney: Hey dude, you're damn right.

Don Jordan: You know, because that's full of shit and he's got History of it now.

Darryl Kinney: Oh yeah.

Don Jordan: He even did it to me and let me tell you, you get me on the stand I'll tell you everything. I got (inaudible).

Darryl Kinney: Oh cool.

Don Jordan: I got no (inaudible) so.

Darryl Kinney: All right.

Don Jordan: But anyway (inaudible) I'm not supposed to be talking to anybody about anything about the case but--

Darryl Kinney: Okay.

Don Jordan: -- I haven't really given you any information.

Darryl Kinney: Okay.

Don Jordan: -- I haven't really given you any information.

Darryl Kinney: Okay.

Don Jordan:(Inaudible).

Darryl Kinney: Oh cool. Cool.

Don Jordan:(Inaudible).

Darryl Kinney: All right dude.

Don Jordan: All right?

Darryl Kinney: All right later.

Don Jordan: Have a good one.

LT/ Darryl Kinney & Don Jordan / 8-19-04

State of Illinois

SS:

County Of Cook

Joann M. Voss, being duly sworn, states she is a transcriber for Voss Transcription, Inc.; says that she was responsible for the transcription of foregoing from a tape recording, and it is an accurate transcript thereof insofar as to her and/ or her employees' ability and mechanical limitations render possible. Joann M. Voss

A. Say that again.

Q. Do you recall asking Mr. Corr about me signing a severance agreement and would that stop me from getting unemployment and his reply was if you gave me no choice, then its of no significance. If you gave me no choice to return to work, then that document is of no--

A. Correct.

Q. Thank you. Did Mr. Corr ask you why I was fired?

A. I told Mr. Corr you signed the severance agreement.

Q. Did Mr. Corr ask you why was I fired?

A. You weren't fired.

Q. Hold on one second. This is off the record for a second. You know what, leave it on. Okay you said I wasn't fired. Is that your final answer?

A. You signed a severance agreement.

Q. The discussion that you and me had with Mr. Corr that was tape-recorded you commented to Mr. Corr that I was fired. And you and I signed a severance agreement while leaving.

A. No, that's not correct.

Q. You told Mr. Corr I wasn't fired. You told him I quit.

MR. CONVERY: Would you at least let the witness answer the question.

THE WITNESS: I told him you signed a severance agreement. Could you read back what he just said for that question? BY MR. KINNEY:

Q. Which most people that signed a severance agreement, you're saying that they quit, right?

MR. CONVERY: Objection, foundation. Calling for speculation.

MR. KINNEY: He already said I resigned, which is quitting.

THE WITNESS: I'm saying that you elected to sign the severance agreement, and you were not fired because you resigned. You cant do both. You either resigned or fired. In this case you chose resigning and taking a severance

UNITED STATES OF AMERICA

NORTHERN DISTRICT IF ILLINOIS

EASTERN DIVISION

STATE OF ILLINOIS

COUNTY OF COOK

I, SYLVIA N. FRANKLIN, Certified Shorthand Reporter, and notary public in and for the County of Cook and State of Illinois, do hereby certify that RICHARD J. STABACK was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth, and that the foregoing deposition was recorded stenographically by me and reduced to typewriting by me. I FURTHER CERTIFY that the foregoing transcript of the said deposition is a true, correct, and complete transcript of the testimony given by the said witness at the time and place specified hereinbefore. I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

Conference room at Hamilton Partners?

A. Tape-recorded?

Q. Tape-recorded with a VCR that's right next to the receptionist there?

A. The conference room is off of the lobby.

Q. Right, right across from the elevator.

A. Right. The lobby has cameras inside that face the elevators.

Q. Right. To the left of the receptionist there is a door that opens with a TV and VCR in it. Was this conversation recorded? If you don't recall, we can leave it at that.

A. Our conversation?

Q. Was our conversation in that room recorded at any time?

A. Not to my knowledge, no. Did you have a tape recorder? I didn't.

Q. Do you recall having Nancy Lucht change videotapes in a tape recorder at 3 Hawthorne Parkway?

A. Did I recall having Nancy Lucht change it?

Q. Yes.

A. No, I don't.

Q. Do you recall any taperecorders being-- well, me and you had that conversation. Do you recall any cameras being

installed at 3 Hawthorne Parkway on the fourth floor?

A. I had cameras installed at 3 Hawthorne Parkway after you complained.

MR. KINNEY: Thank you. And that concludes my questions.

The witness: Good.

AND FURTHER DEPONENT SAITH NOT***

UNITED STATES OF AMERICA

NORTHERN DISTRICT IF ILLINOIS

EASTERN DIVISION

STATE OF ILLINOIS

DARRYL KINNEY Plaintiff VS. HAMILTON

PARTNERS Defendants NO. 03C 3905

The deposition of MICHEAL BURBACK, called by the Plaintiff for examination, pursuant to notice to the Federal Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken before SYLVIA N. FRANKLIN, Certified Shorthand and Reporter and Notary Public within and for the County of Cook and State of Illinois, at 219 South Dearborn Street, Suite 1429,Chicago, Illinois, on the 17th day of December, A.D. 2003.

(The witness was sworn.)

MICHEAL BURBACK,

Having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Kinney:

Q. What's your name for the record?

A. Michael Burback. (104)

Q. Mike, how long have you worked for Hamilton Partners?

A. Not quite three years.

Q. Why did you say that I tried to get you to join a union?

MR. CONVERY: Objection, foundation as to the question, but you may answer.

MR. KINNEY: You know, back up. Don't answer that question yet. I am going to show this to you.

BY MR. KINNEY:

Q. Are you aware of the whistle blower laws in Illinois?

A. No.

Q. That means that a blower cannot tell you or threaten your job in any way without retaliation. Anything you say here cannot be retaliated against or you probably would be here probably with a class action suit, that no one can tell you not to tell the truth here. No one can coax your words on what to say. It's a law.

MR. CONVERY: I am just going to object as to what you say the law is.

MR KINNEY: Okay.

MR. CONVERY: The piece of paper that you have shown me, a governor's executive order-- hold on one second. Just so you

know, this particular executive order applies to any employee of any constitutional officer of this state who discloses information.

MR. KINNEY: Whistle blower laws--

MR.CONVERY: If I could just finish. This particular executive order--

MR.KINNEY: That one. Okay. Go ahead.

MR. CONVERY: Are you finished?

MR.KINNEY: Yes.

MR. CONVERY: This particular executive order applies to employees of the State of Illinois. People who are employed by the state not in the state. Hamilton Partners is not the State of Illinois.

MR. KINNEY: No.

MR.CONVERY: See, this particular executive order with respect to whistle blowers applies to the employees of the state of Illinois.

MR.KINNEY: This here is not the actual law. This is law telling him-- Im talking about the whistle blower law itself, not this one. Im letting him know this law exist not only for state

employees but any employee for any company in Illinois in Federal and State courts.

MR.CONVERY: Well, I disagree with your characterization, and I object accordingly in the record as to what you believe the law to say. The law of rertaliation is well founded in Federal cases and in the Federal statutes.

MR. KINNEY: Right.